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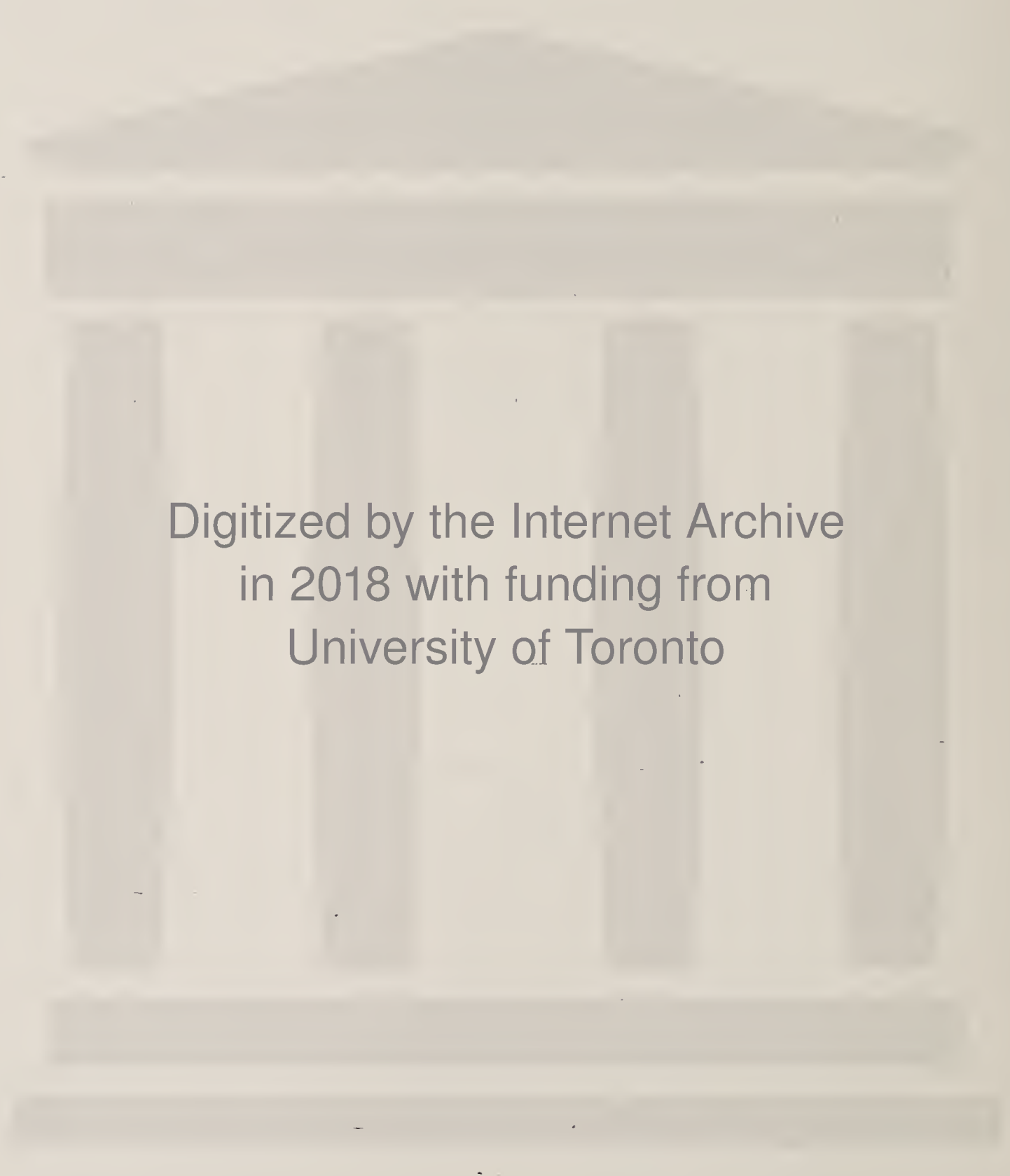
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4. Formal validity

Note: (From Green, Cases and Materials on Family Law, 1983, p.48)

While the courts have held that the federal power relating to marriage deals with personal capacity to marry, they have upheld provincial legislation which requires, for persons below a certain age, parental consent as a condition for a license on the ground that it was a marriage formality in relation to the solemnization of marriages in the province. Kerr [1934]S.C.R.72,[1934] 2 DLR 369.

The practical effect of this decision is that the provinces can regulate the age of marriage as long as they do not purport to allow marriage below the age of common law capacity to marry - 12 for females, 14 for males.

In Legebokoff (1982), 28 R.F.L.(2d) 212 (B.S.S.C.) the petitioner sought a declaration of invalidity of her marriage on the ground that at the time it was celebrated she was 15 years of age. The Court dismissed the petition and said (p.215):

At common law, derived from ecclesiastical law, the marriage of a child of less than seven years is void. The marriage of a male older than seven years but younger than 14 years, or a female older than seven but younger than 12 years is voidable at the instance of the infant upon his or her attaining the requisite minimum age. Further, a marriage where either or both parties were under age becomes validated if they continue to cohabit as husband and wife after reaching the age of capacity.

Re Fox (1972), 30 D.L.R. (3d) 422 (Ont.Co.Ct.)

LAZIER, Co.Ct.J. (orally):—This is an application brought under the *Marriage Act*, R.S.O. 1970, c. 261, by Catherine May Fox who is 16 years of age. The application arises because of the provisions of s. 7 of the Act which states in part that:

7(1) No person shall,

(a) issue a licence . . . to;

any person under the age of eighteen years unless the consent in writing of the father is obtained.

The father, Alfred Fox, would not consent in writing to the obtaining of the marriage licence.

There is then provision in s. 9(1) of the Act which, in effect, states that where the father "unreasonably or arbitrarily withholds his consent or is by his actions not interested in the maintenance or well-being of" the applicant, the person who

3. Definition of "Spouse" under the F.L.R.A.

See Harris v. Godekewetch, supra.

4. Conduct

Horlock v. Horlock (1983), 37 R.F.L. (2d) 198 (Ont. H.C.)

[Pursuant to a decree of divorce granted in 1976, the former wife was awarded lump sum maintenance and periodic support of \$1,700 per month. After the divorce, the husband's income decreased dramatically, but he continued to maintain an affluent lifestyle by disposing of his capital assets. By the end of 1983 the husband owned capital assets worth \$601,950 and had transferred \$291,450 worth of assets to his present wife. The former wife owned assets worth \$212,000 and was cohabiting with another man. In 1983 the husband applied to terminate the maintenance order.]

20th December 1983. HONEY L.J.S.C.: — . . .

Since August 1982 Mrs. Horlock has cohabited with Mr. Anthony Acerra, on premises which they own as joint tenants. They contributed equally to the purchase of the property. By agreement in writing (Ex. 26) Mrs. Horlock and Mr. Acerra set out the rights and obligations of each in their respective properties during cohabitation, after, if it should cease, and in the event of death. They contribute jointly to all expenses in connection with the residence. Living expenses are shared.

In 1982 Mrs. Horlock sold the matrimonial home for \$160,000. She paid \$55,000 for a one-half interest in the home in which she now cohabits with Mr. Acerra, and in certain improvements they made to that property after its purchase. She purchased a \$50,000 Canada Savings Bond which bears interest at 9½ per cent. She has about \$12,000 in a bank account which bears interest at 7 per cent. She has furniture, appliances, clothing and jewellery and a Cadillac automobile, the value of all totalling \$23,000. Mrs. Horlock's total assets are \$212,000.

Mrs. Horlock's monthly income is about \$2,900. Living expenses for herself and Rosemary are \$2,677 per month. If Mrs. Horlock's maintenance ceases, and Rosemary's maintenance is increased to \$300 per month, it will mean a net decrease to Mrs. Horlock of \$1,550 per month. Mrs. Horlock would then be required to reduce her standard of living or look to Mr. Acerra for assistance. Mr. Acerra would be unable to help financially as he now has a shortfall of about \$145 per month between his expenses and his income. He said he made this up by "deficit financing".